

CITY OF ALAMEDA

Memorandum

To: Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

From: John A. Russo
Executive Director

Date: October 5, 2011

Re: Approve Term Sheet between United States Navy and the Alameda Reuse
and Redevelopment Authority for No-Cost Conveyance of Alameda Point

BACKGROUND

As part of the process to attract the Lawrence Berkeley National Lab (LBNL) Second Campus to Alameda Point, Alameda Reuse and Redevelopment Authority (ARRA) staff and ARRA's private development partner, Alameda Point Lab Partners (APLP), met with staff from the Department of the Navy (Navy) in San Diego on Thursday, June 16, 2011, to request a no-cost conveyance of the proposed 45-acre LBNL site at Alameda Point. Alameda Point consists of 918 acres of the former Naval Air Station Alameda (NAS Alameda). The ARRA's request was made pursuant to the NAS Alameda Community Reuse Plan (Reuse Plan) adopted in 1996 (Exhibit 1), and the ARRA and Navy Economic Development Conveyance (EDC) Memorandum of Agreement (MOA) executed in 2000, as amended (Exhibit 2). The EDC MOA authorized a no-cost conveyance of major portions of the former NAS Alameda property, including Alameda Point and Bayport, to the ARRA consistent with the Reuse Plan. (The property to be conveyed to ARRA shall be referred to as the "EDC Property.")

Soon after the June 16th meeting, the Navy agreed to negotiate a no-cost conveyance of not only the proposed LBNL Second Campus site, but the whole of the EDC Property, subject to the ARRA agreeing to certain conditions. These conditions include ARRA's confirmation of its commitment to the Reuse Plan, to existing aspects of the EDC MOA, and to coordination on ongoing environmental clean-up issues. The Navy also requested an amendment to the EDC MOA that memorializes an enforcement mechanism in the event that ARRA develops the EDC Property in a manner inconsistent with the Reuse Plan. ARRA staff has been discussing these conditions with the Navy during the last several months, which has resulted in an agreed-upon Term Sheet between the Navy and ARRA (Term Sheet) that provides for the no-cost conveyance of the entire EDC Property to the ARRA (Exhibit 3). The proposed terms are summarized in greater detail below.

The Term Sheet will serve as the basis for an amendment to the EDC MOA planned for approval later this year. It is anticipated that an initial conveyance of significant portions of the EDC Property, including the LBNL Second Campus, will occur next year.

DISCUSSION

A summary of the proposed Term Sheet recommended by staff is provided below:

1. **Reuse Plan Confirmation.** The ARRA confirms its commitment to the policies, goals, objectives, and development projections contained in the Reuse Plan. The themes of the Reuse Plan include job creation and economic development, small town feeling, de-emphasis of the automobile, transit orientation, mixed-use development, neighborhood centers, and sustainable development and design. All of these themes are consistent with the findings from the ARRA's most recent community planning process that was conducted during the last year. The Reuse Plan allows for over five million square feet of commercial development and 2,700 units of housing for all of the former NAS Alameda property, including the EDC Property and other former NAS property, such as the Fleet Industrial Supply Center. The Reuse Plan development envelope for the whole of the NAS Alameda property and for Alameda Point in particular represents a significant amount of development that is likely to be phased over at least ten to 15 years, depending on market conditions.
2. **Comprehensive Conveyance Strategy.** The ARRA and Navy confirm their commitment to a comprehensive strategy for conveying the EDC Property. This assures both the ARRA and Navy that there is a clear process for transferring the entire property, avoiding the potential for "cherry picking" by either party. In other words, ARRA does not want the Navy to convey the least desirable areas of the EDC Property, while the Navy wants to avoid conveying only the most desirable portions of the EDC Property.

A. Conveyance via FOST

The EDC MOA currently requires that the ARRA accept transfer from the Navy of any parcel of the EDC Property at the former NAS Alameda, for which the Navy has executed a Finding of Suitability of Transfer (FOST). A FOST documents the environmental suitability of real property to be transferred by the Navy. The Navy performs its environmental remediation under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA is the primary law that governs the environmental clean-up of properties subject to the Base Realignment and Closure (BRAC) process.

B. Conveyance via FOSET

The EDC MOA also allows for the transfer of property pursuant to a Finding of Suitability of Early Transfer (FOSET), which is the transfer of real property that has not yet achieved its clean-up goals. Any transfer pursuant to a FOSET will require the approval of the Administrator of the

United States Environmental Protection Agency and the concurrence of the Governor, who in practice is advised by the California Department of Toxic Substances Control on such matters. For FOSETed property, the Navy would retain all clean-up obligations associated with the CERCLA remediation process after conveyance.

C. Unforeseen Environmental Liability

Under both the FOST or FOSET scenarios, all liability related to unforeseen environmental conditions or issues pursuant to CERCLA would remain with the Navy in perpetuity per CERCLA and Section 330 of the 1993 National Defense Authorization Act. The Term Sheet includes a schedule for transferring all of the EDC Property as soon as practicable via FOSTs with the potential for FOSETs. The goal of expediting transfer of all of the EDC Property, including transfer via a FOSET, does not place any additional environmental liability on the ARRA.

3. **Enforcement Mechanism.** The ARRA and Navy agree to create an enforcement mechanism in the event that the ARRA develops the EDC Property in a manner inconsistent with the Reuse Plan. Specifically, the Navy would be paid \$50,000 per unit (inflated over time pursuant to the Consumer Price Index for the San Francisco Bay Area) at the time a certificate of occupancy is issued for any market rate housing unit developed on the EDC Property in excess of 2,011 units (the number of housing units allowed by the Reuse Plan on the EDC Property). The 2,011 units include the 586 housing units already constructed at Bayport and 1,435 units of housing allowable at Alameda Point.
4. **Cooperation on Environmental Remediation.** The ARRA and Navy agree to continue to cooperate in resolving environmental remediation issues in an expeditious and collaborative manner and in addressing environmental regulator requirements and issues.
5. **Update of Other Provisions.** Since the EDC MOA was executed in 2000, the ARRA and Navy agree to update the document to reflect current federal requirements, including Article 6 of the EDC MOA relating to the reinvestment of the use of proceeds from sale or lease of the property, excluding tax revenues. The reinvestment of these proceeds will be extended for an additional 25-year period.

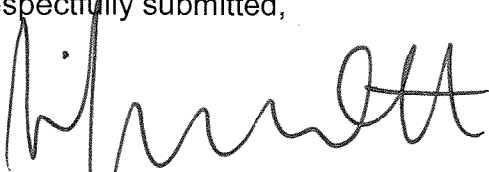
FINANCIAL IMPACT

The Term Sheet outlined above proposes a no-cost conveyance of the EDC Property, resulting in no financial impacts to the ARRA or General Fund.

RECOMMENDATION

Approve Term Sheet between United States Navy and the Alameda Reuse and Redevelopment Authority for no-cost conveyance of Alameda Point.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Ott', written over a horizontal line.

Jennifer Ott
Chief Operating Officer – Alameda Point

Exhibits:

1. Naval Air Station Alameda Community Reuse Plan, dated January 1996 – on file in City Clerk's Office
2. Memorandum of Agreement between the United States of America Acting by and through the Secretary of the Navy United States Department of the Navy and the Alameda Reuse and Redevelopment Authority for the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority, dated June 6, 2000 and First Amendment, dated July 31, 2001 – on file in City Clerk's Office
3. Term Sheet for Amendment to the Memorandum of Agreement for the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority

**Term Sheet for Amendment (No. 2) to the
Memorandum of Agreement for the Conveyance
of Portions of the Naval Air Station Alameda
from the United States of America
to the Alameda Reuse and Redevelopment Authority**

Purpose: This term sheet ("**Term Sheet**") dated October __, 2011, by and between the United States of America, acting by and through the Department of the Navy ("**Navy**") and the Alameda Reuse and Redevelopment Authority ("**ARRA**") (hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**"), is entered into for the purpose of summarizing the agreed upon terms and conditions that will form the basis for Amendment (No.2) to the *Memorandum of Agreement for the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority*, executed June 6, 2000 (hereinafter referred to as the "**EDC Agreement**").

Background: In 1993, the Defense Base Closure and Realignment Commission recommended the closure of the former Naval Air Station Alameda ("**NAS Alameda**"). In accordance with the Defense Base Closure and Realignment Act of 1990, as amended, NAS Alameda was closed and a portion of the property that comprised the former NAS Alameda was declared surplus and made available for disposal.

As the Federally recognized local redevelopment authority for NAS Alameda, the ARRA prepared and adopted in January 1996, and subsequently amended in September 1997, the "NAS Alameda Community Reuse Plan" (the "**Reuse Plan**").

By application dated October 1997 and amendment to that application dated December 1998, the ARRA applied for a No-Cost Economic Development Conveyance to acquire portions of NAS Alameda ("**EDC Application**"), to be developed in accordance with the Reuse Plan.

The Navy approved the No-Cost EDC Application, and in accordance with the provisions of the National Environmental Policy Act of 1969, as amended ("**NEPA**"), the Navy prepared an Environmental Impact Statement ("**EIS**") for disposal of the surplus NAS Alameda property. A Record of Decision (hereinafter referred to as the "**NEPA ROD**")

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regarding the disposal, and which endorsed the Reuse Plan, was issued by the Navy on February 29, 2000.

The Navy and the ARRA subsequently negotiated and executed the EDC Agreement. Those portions of NAS Alameda subject to the EDC Agreement shall be described hereinafter as the “**EDC Property**.”

Terms:

Therefore, based on the Parties’ respective confirmation and commitment to the goals, objectives, and requirements contained in the EDC Agreement, the Parties agree to amend the EDC Agreement as follows:

1. The Parties hereby re-confirm their commitment to the transfer and conveyance of the EDC Property as set forth in Article 3 of the EDC Agreement. In furtherance of this commitment, the Parties agree to develop a comprehensive conveyance strategy for the remainder of the EDC Property.

2. While the liabilities and responsibilities of the Parties for environmental remediation of the EDC Property remain as required under Federal law and the EDC Agreement, the Parties agree to collaborate to resolve any environmental remediation issues and concerns in an expeditious and cooperative manner and to seek cooperatively to address environmental regulator requirements, issues and concerns relating to the EDC Property.

3. The Reuse Plan addresses a planning area greater than the EDC Property boundaries. Nevertheless, the Reuse Plan and the EDC Agreement contemplate that two thousand and eleven (2,011) residential units will be constructed on the EDC Property (hereinafter referred to as the “**Residential Base-Line Amount**”). To ensure that the ARRA develops the EDC Property in a manner that is consistent with the Reuse Plan and the NEPA ROD, the ARRA shall prepare and submit to the Navy an annual comprehensive and cumulative report that identifies the number of housing units for which a certificate of occupancy has been issued on the EDC Property during the reporting period (“**Unit Report**”). The Unit Report shall be provided to the Navy annually within ninety (90) days following the completion of the ARRA’s fiscal year and shall continue until such time as the EDC Property is fully developed. In the event that the ARRA develops the EDC Property in a manner that is inconsistent with the Reuse Plan and the NEPA ROD, for every market-rate residential unit granted a certificate of occupancy in excess of the Residential Base-Line Amount (“**Excess Residential Unit**”), as reflected in the annual Unit

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Report, the ARRA shall pay the Navy the fixed sum of fifty thousand dollars (\$50,000.00), adjusted for inflation based on the Consumer Price Index for the San Francisco Bay area, or other index to be agreed upon by the Parties, for each such market-rate residential unit within three (3) months following the submission of such Unit Report.

4. To expedite the conveyance and redevelopment of the EDC Property in accordance with the Reuse Plan and the NEPA ROD, the Navy commits its best effort to convey all of its right, title and interest in all EDC Property to the ARRA in multiple phases in accordance with the conveyance schedule set forth in Exhibit "A" ("**Conveyance Schedule**"), attached and made a part of this Term Sheet. The Conveyance Schedule shall reflect (i) the EDC Property that will be conveyed following the execution of a Finding of Suitability to Transfer ("**FOST**") and the anticipated conveyance date, and (ii) the EDC Property that will be conveyed following the execution of a Finding of Suitability for Early Transfer ("**FOSET**") and the anticipated date a Covenant Deferral Request ("**CDR**") will be submitted to the Governor for such FOSET, if applicable. For any portion of the EDC Property that is not scheduled to be conveyed to the ARRA on or before December 2012, the ARRA and the Navy shall meet and consider, during drafting of the EDC Amendment, whether to proceed with a Covenant Deferral Request and Early Transfer of such portions of the EDC Property, which the Parties acknowledge and agree may lead to corresponding changes to Exhibit A.

5. The Navy shall prepare and submit to the ARRA an annual comprehensive and cumulative report that identifies any changes in the Conveyance Schedule and the new conveyance date for each EDC Property parcel that remains to be conveyed to the ARRA pursuant to the EDC Agreement ("**Conveyance Report**"). The Conveyance Report shall be provided to the ARRA annually until such time as all of the EDC Property is conveyed in fee to the ARRA.

6. Since the EDC Agreement was executed in 2000, the Parties agree that certain provisions of the EDC Agreement require revision and update in order to reflect current Federal, Department of Defense and Navy requirements. The amendment to the EDC Agreement will reflect those revisions. Among other revisions, the Parties understand and agree that Article 6 of the EDC Agreement relating to the Use of Proceeds from Sale or Lease shall be extended for an additional twenty-five (25) year period to reflect the Conveyance Schedule and the need for infrastructure improvements.

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7. The Parties shall negotiate and execute an amendment to the EDC Agreement to implement the terms and conditions set forth above. The validity of this Term Sheet is expressly and wholly contingent upon the execution of an amendment to the EDC Agreement.

APPROVED:

**ALAMEDA REUSE AND
REDEVELOPMENT AUTHORITY**

Name:
Title:

Date: _____

APPROVED TO FORM:

By: 

APPROVED:

DEPARTMENT OF THE NAVY

Name:
Title:

Date: _____

WITNESS:

By: _____

